

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 793**

Introduced by Burling, 33; Avery, 28; Stuthman, 22.

Read first time January 09, 2008

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to counties; to amend sections 71-901,  
2 71-921, 71-922, 71-926, 71-1201, 71-1205, 71-1206, and  
3 71-1210, Revised Statutes Cumulative Supplement, 2006,  
4 and section 71-919, Revised Statutes Supplement, 2007; to  
5 change provisions relating to payment for the costs  
6 of emergency protective custody and proceedings; to  
7 harmonize provisions; to provide an operative date; and  
8 to repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 71-901, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           71-901 Sections 71-901 to 71-962 and section 5 of this  
4 act shall be known and may be cited as the Nebraska Mental Health  
5 Commitment Act.

6           Sec. 2. Section 71-919, Revised Statutes Supplement,  
7 2007, is amended to read:

8           71-919 (1) A law enforcement officer who has probable  
9 cause to believe that a person is mentally ill and dangerous or  
10 a dangerous sex offender and that the harm described in section  
11 71-908 or subdivision (1) of section 83-174.01 is likely to occur  
12 before mental health board proceedings under the Nebraska Mental  
13 Health Commitment Act or the Sex Offender Commitment Act may be  
14 initiated to obtain custody of the person may take such person into  
15 emergency protective custody, cause him or her to be taken into  
16 emergency protective custody, or continue his or her custody if  
17 he or she is already in custody. Such person shall be admitted to  
18 an appropriate and available medical facility, jail, or Department  
19 of Correctional Services facility as provided in subsection (2) of  
20 this section. Each county shall make arrangements with appropriate  
21 facilities inside or outside the county for such purpose. ~~and shall~~  
22 ~~pay the cost of the emergency protective custody of persons from~~  
23 ~~such county in such facilities.~~ A mental health professional who  
24 has probable cause to believe that a person is mentally ill and  
25 dangerous or a dangerous sex offender may cause such person to be

1 taken into custody and shall have a limited privilege to hold such  
2 person until a law enforcement officer or other authorized person  
3 arrives to take custody of such person.

4 (2) (a) A person taken into emergency protective custody  
5 under this section shall be admitted to an appropriate and  
6 available medical facility unless such person has a prior  
7 conviction for a sex offense listed in section 29-4003.

8 (b) A person taken into emergency protective custody  
9 under this section who has a prior conviction for a sex offense  
10 listed in section 29-4003 shall be admitted to a jail or Department  
11 of Correctional Services facility unless a medical or psychiatric  
12 emergency exists for which treatment at a medical facility is  
13 required. The person in emergency protective custody shall remain  
14 at the medical facility until the medical or psychiatric emergency  
15 has passed and it is safe to transport such person, at which time  
16 the person shall be transferred to an available jail or Department  
17 of Correctional Services facility.

18 (3) Upon admission to a facility of a person taken into  
19 emergency protective custody by a law enforcement officer under  
20 this section, such officer shall execute a written certificate  
21 prescribed and provided by the Department of Health and Human  
22 Services. The certificate shall allege the officer's belief that  
23 the person in custody is mentally ill and dangerous or a dangerous  
24 sex offender and shall contain a summary of the person's behavior  
25 supporting such allegations. A copy of such certificate shall be

1 immediately forwarded to the county attorney.

2           (4) The administrator of the facility shall have such  
3 person evaluated by a mental health professional as soon as  
4 reasonably possible but not later than thirty-six hours after  
5 admission. The mental health professional shall not be the mental  
6 health professional who causes such person to be taken into custody  
7 under this section and shall not be a member or alternate member  
8 of the mental health board that will preside over any hearing  
9 under the Nebraska Mental Health Commitment Act or the Sex Offender  
10 Commitment Act with respect to such person. A person shall be  
11 released from emergency protective custody after completion of such  
12 evaluation unless the mental health professional determines, in  
13 his or her clinical opinion, that such person is mentally ill and  
14 dangerous or a dangerous sex offender.

15           Sec. 3. Section 71-921, Revised Statutes Cumulative  
16 Supplement, 2006, is amended to read:

17           71-921 (1) Any person who believes that another person  
18 is mentally ill and dangerous may communicate such belief to  
19 the county attorney. The filing of a certificate by a law  
20 enforcement officer under section 71-919 shall be sufficient to  
21 communicate such belief. If the county attorney concurs that such  
22 person is mentally ill and dangerous and that neither voluntary  
23 hospitalization nor other treatment alternatives less restrictive  
24 of the subject's liberty than inpatient or outpatient treatment  
25 ordered by a mental health board is available or would suffice to

1 prevent the harm described in section 71-908, he or she shall file  
2 a petition as provided in this section.

3 (2) The petition shall be filed with the clerk of the  
4 district court in any county within: (a) The judicial district in  
5 which the subject is located; (b) the judicial district in which  
6 the alleged behavior of the subject occurred which constitutes  
7 the basis for the petition; or (c) another judicial district in  
8 the State of Nebraska if authorized, upon good cause shown, by a  
9 district judge of the judicial district in which the subject is  
10 located. In such event, all proceedings before the mental health  
11 board shall be conducted by the mental health board serving such  
12 other county. ~~and all costs relating to such proceedings shall~~  
13 ~~be paid by the county of residence of the subject.~~ In the order  
14 transferring such cause to another county, the judge shall include  
15 such directions as are reasonably necessary to protect the rights  
16 of the subject.

17 (3) The petition shall be in writing and shall include  
18 the following information:

19 (a) The subject's name and address, if known;

20 (b) The name and address of the subject's spouse, legal  
21 counsel, guardian or conservator, and next-of-kin, if known;

22 (c) The name and address of anyone providing psychiatric  
23 or other care or treatment to the subject, if known;

24 (d) A statement that the county attorney has probable  
25 cause to believe that the subject of the petition is mentally ill

1 and dangerous;

2 (e) A statement that the beliefs of the county attorney  
3 are based on specific behavior, acts, attempts, or threats which  
4 shall be specified and described in detail in the petition; and

5 (f) The name and address of any other person who may have  
6 knowledge of the subject's mental illness or substance dependence  
7 and who may be called as a witness at a mental health board hearing  
8 with respect to the subject, if known.

9 Sec. 4. Section 71-922, Revised Statutes Cumulative  
10 Supplement, 2006, is amended to read:

11 71-922 (1) Mental health board proceedings shall be  
12 deemed to have commenced upon the earlier of (a) the filing of a  
13 petition under section 71-921 or (b) notification by the county  
14 attorney to the law enforcement officer who took the subject  
15 into emergency protective custody under section 71-920 or the  
16 administrator of the treatment center or medical facility having  
17 charge of the subject of his or her intention to file such  
18 petition. The county attorney shall file such petition as soon as  
19 reasonably practicable after such notification.

20 (2) A petition filed by the county attorney under section  
21 71-921 may contain a request for the emergency protective custody  
22 and evaluation of the subject prior to commencement of a mental  
23 health board hearing pursuant to such petition with respect to  
24 the subject. Upon receipt of such request and upon a finding of  
25 probable cause to believe that the subject is mentally ill and

1 dangerous as alleged in the petition, the court or chairperson  
 2 of the mental health board may issue a warrant directing the  
 3 sheriff to take custody of the subject. If the subject is already  
 4 in emergency protective custody under a certificate filed under  
 5 section 71-919, a copy of such certificate shall be filed with the  
 6 petition. The subject in such custody shall be held in the nearest  
 7 appropriate and available medical facility and shall not be placed  
 8 in a jail. Each county shall make arrangements with appropriate  
 9 medical facilities inside or outside the county for such purpose,  
 10 and shall pay the cost of the emergency protective custody of  
 11 persons from such county in such facilities.

12 (3) The petition and all subsequent pleadings and filings  
 13 in the case shall be entitled In the Interest of ....., Alleged  
 14 to be Mentally Ill and Dangerous. The county attorney may dismiss  
 15 the petition at any time prior to the commencement of the hearing  
 16 of the mental health board under section 71-924, and upon such  
 17 motion by the county attorney, the mental health board shall  
 18 dismiss the petition.

19 Sec. 5. The cost of emergency protective custody and  
 20 proceedings under sections 71-919, 71-921, 71-922, and 71-926 shall  
 21 be paid by the county of legal settlement of the person or subject.  
 22 For purposes of this section, county of legal settlement of a  
 23 person or subject means the county in which he or she has resided  
 24 for one year continuously, the county in which he or she has  
 25 resided for six months continuously if he or she has not resided

1 one year continuously in any county, or the county in which he or  
2 she is found immediately prior to emergency protective custody or  
3 proceedings if he or she has not resided in any county continuously  
4 for six months.

5           Sec. 6. Section 71-926, Revised Statutes Cumulative  
6 Supplement, 2006, is amended to read:

7           71-926 (1) At the conclusion of a mental health board  
8 hearing under section 71-924 and prior to the entry of a treatment  
9 order by the board under section 71-925, the board may (a) order  
10 that the subject be retained in custody until the entry of such  
11 order and the subject may be admitted for treatment pursuant to  
12 such order or (b) order the subject released from custody under  
13 such conditions as the board deems necessary and appropriate to  
14 prevent the harm described in section 71-908 and to assure the  
15 subject's appearance at a later disposition hearing by the board.  
16 A subject shall be retained in custody under this section at the  
17 nearest appropriate and available medical facility and shall not  
18 be placed in a jail. Each county shall make arrangements with  
19 appropriate medical facilities inside or outside the county for  
20 such purpose\_ and shall pay the cost of the emergency protective  
21 eustody of persons from such county in such facilities.

22           (2) A subject who has been ordered to receive inpatient  
23 or outpatient treatment by a mental health board may be provided  
24 treatment while being retained in emergency protective custody and  
25 pending admission of the subject for treatment pursuant to such

1 order.

2           Sec. 7. Section 71-1201, Revised Statutes Cumulative  
3 Supplement, 2006, is amended to read:

4           71-1201 Sections 71-1201 to 71-1226 and section 11 of  
5 this act shall be known and may be cited as the Sex Offender  
6 Commitment Act.

7           Sec. 8. Section 71-1205, Revised Statutes Cumulative  
8 Supplement, 2006, is amended to read:

9           71-1205 (1) Any person who believes that another person  
10 is a dangerous sex offender may communicate such belief to the  
11 county attorney. The filing of a certificate by a law enforcement  
12 officer under section 71-919 shall be sufficient to communicate  
13 such belief. If the county attorney concurs that such person is a  
14 dangerous sex offender and that neither voluntary hospitalization  
15 nor other treatment alternatives less restrictive of the subject's  
16 liberty than inpatient or outpatient treatment ordered by a mental  
17 health board is available or would suffice to prevent the harm  
18 described in subdivision (1) of section 83-174.01, the county  
19 attorney shall file a petition as provided in this section.

20           (2) The petition shall be filed with the clerk of the  
21 district court in any county within: (a) The judicial district in  
22 which the subject is located; (b) the judicial district in which  
23 the alleged behavior of the subject occurred which constitutes the  
24 basis for the petition; or (c) another judicial district in the  
25 State of Nebraska, if authorized, upon good cause shown, by a

1 district judge of the judicial district in which the subject is  
2 located. In such event, all proceedings before the mental health  
3 board shall be conducted by the mental health board serving such  
4 other county, and all costs relating to such proceedings shall  
5 be paid by the county of residence of the subject. In the order  
6 transferring such cause to another county, the judge shall include  
7 such directions as are reasonably necessary to protect the rights  
8 of the subject.

9 (3) The petition shall be in writing and shall include  
10 the following information:

11 (a) The subject's name and address, if known;

12 (b) The name and address of the subject's spouse, legal  
13 counsel, guardian or conservator, and next of kin, if known;

14 (c) The name and address of anyone providing psychiatric  
15 or other care or treatment to the subject, if known;

16 (d) A statement that the county attorney has probable  
17 cause to believe that the subject of the petition is a dangerous  
18 sex offender;

19 (e) A statement that the beliefs of the county attorney  
20 are based on specific behavior, acts, criminal convictions,  
21 attempts, or threats which shall be described in detail in the  
22 petition; and

23 (f) The name and address of any other person who may have  
24 knowledge of the subject's mental illness or personality disorder  
25 and who may be called as a witness at a mental health board hearing

1 with respect to the subject, if known.

2           Sec. 9. Section 71-1206, Revised Statutes Cumulative  
3 Supplement, 2006, is amended to read:

4           71-1206 (1) Mental health board proceedings shall be  
5 deemed to have commenced upon the earlier of (a) the filing  
6 of a petition under section 71-1205 or (b) notification by the  
7 county attorney to the law enforcement officer who took the  
8 subject into emergency protective custody under section 71-919 or  
9 the administrator of the treatment facility having charge of the  
10 subject of the intention of the county attorney to file such  
11 petition. The county attorney shall file such petition as soon as  
12 reasonably practicable after such notification.

13           (2) A petition filed by the county attorney under section  
14 71-1205 may contain a request for the emergency protective custody  
15 and evaluation of the subject prior to commencement of a mental  
16 health board hearing pursuant to such petition with respect to  
17 the subject. Upon receipt of such request and upon a finding of  
18 probable cause to believe that the subject is a dangerous sex  
19 offender as alleged in the petition, the court or chairperson  
20 of the mental health board may issue a warrant directing the  
21 sheriff to take custody of the subject. If the subject is already  
22 in emergency protective custody under a certificate filed under  
23 section 71-919, a copy of such certificate shall be filed with  
24 the petition. The subject in such custody shall be held in an  
25 appropriate and available medical facility, jail, or Department

1 of Correctional Services facility. A dangerous sex offender shall  
 2 not be admitted to a medical facility for emergency protective  
 3 custody unless a medical or psychiatric emergency exists requiring  
 4 treatment not available at a jail or correctional facility. Each  
 5 county shall make arrangements with appropriate facilities inside  
 6 or outside the county for such purpose, and shall pay the cost of  
 7 the emergency protective custody of persons from such county in  
 8 such facilities.

9 (3) The petition and all subsequent pleadings and filings  
 10 in the case shall be entitled In the Interest of . . . . ,  
 11 Alleged to be a Dangerous Sex Offender. The county attorney may  
 12 dismiss the petition at any time prior to the commencement of the  
 13 hearing of the mental health board under section 71-1208, and upon  
 14 such motion by the county attorney, the mental health board shall  
 15 dismiss the petition.

16 Sec. 10. Section 71-1210, Revised Statutes Cumulative  
 17 Supplement, 2006, is amended to read:

18 71-1210 (1) At the conclusion of a mental health board  
 19 hearing under section 71-1208 and prior to the entry of a treatment  
 20 order by the board under section 71-1209, the board may (a)  
 21 order that the subject be retained in custody until the entry  
 22 of such order and the subject may be admitted for treatment  
 23 pursuant to such order or (b) order the subject released from  
 24 custody under such conditions as the board deems necessary and  
 25 appropriate to prevent the harm described in subdivision (1) of

1 section 83-174.01 and to assure the subject's appearance at a later  
2 disposition hearing by the board. A subject shall be retained in  
3 custody under this section at an appropriate and available medical  
4 facility, jail, or Department of Correctional Services facility.  
5 A dangerous sex offender shall not be admitted to a medical  
6 facility for emergency protective custody unless a medical or  
7 psychiatric emergency exists requiring treatment not available at a  
8 jail or correctional facility. Each county shall make arrangements  
9 with appropriate facilities inside or outside the county for such  
10 purpose\_ and shall pay the cost of the emergency protective custody  
11 of persons from such county in such facilities-

12 (2) A subject who has been ordered to receive inpatient  
13 or outpatient treatment by a mental health board may be provided  
14 treatment while being retained in emergency protective custody and  
15 pending admission of the subject for treatment pursuant to such  
16 order.

17 Sec. 11. The cost of emergency protective custody and  
18 proceedings under sections 71-1205, 71-1206, and 71-1210 shall be  
19 paid by the county of legal settlement of the person or subject.  
20 For purposes of this section, county of legal settlement of a  
21 person or subject means the county in which he or she has resided  
22 for one year continuously, the county in which he or she has  
23 resided for six months continuously if he or she has not resided  
24 one year continuously in any county, or the county in which he or  
25 she is found immediately prior to emergency protective custody or

1 proceedings if he or she has not resided in any county continuously  
2 for six months.

3           Sec. 12. This act becomes operative on January 1, 2009.

4           Sec. 13. Original sections 71-901, 71-921, 71-922,  
5 71-926, 71-1201, 71-1205, 71-1206, and 71-1210, Revised Statutes  
6 Cumulative Supplement, 2006, and section 71-919, Revised Statutes  
7 Supplement, 2007, are repealed.